

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 407

Introduced by Senator Padilla

February 26, 2009

An act to add ~~Section 379 to the Water Code, Article 1.4 (commencing with Section 1101.1) to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code,~~ relating to water conservation.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Padilla. ~~Plumbing fixtures: high water use. Property transfers: plumbing fixtures replacement.~~

~~Existing~~

~~(1) Existing law authorizes public entities that supply water, by the adoption of an ordinance or resolution pursuant to specified procedures, to adopt and enforce a water conservation program. Existing law authorizes these public entities to undertake water conservation and public education programs using an information booklet or materials for use in connection with the use or transfer of real estate requires certain disclosures to be made upon the transfer of real estate. Existing law requires that all water closets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively.~~

~~This bill would declare that it is the intent of the Legislature that these public entities exercise authority pursuant to those provisions to enact ordinances that require the retrofitting of outdated, high water use plumbing fixtures, and the disclosure thereof, in connection with the transfer of real estate.~~

~~This bill would require that, on and after January 1, 2014, all existing plumbing fixtures in any residential or commercial real property that~~

are not water-conserving plumbing fixtures be replaced prior to the time of sale or transfer by the property owner with water-conserving plumbing fixtures, as defined. The bill would require that compliance with this section be included as a condition of escrow for any sale or transfer. The bill would require that a seller or transferor disclose this requirement in advance of any sale or transfer of real property, and would provide that this disclosure of the requirements of this section is a material term of any sale or transfer. The bill would require a seller or transferor of real property to certify to the prospective purchaser or transferee, in writing, under penalty of perjury, that the requirements of this section have been satisfied. By expanding the crime of perjury, this bill would impose a state-mandated local program. The bill would except from its provisions registered historical sites, certain transfers, including those between specified family members, and transfers in which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible. The bill would require a real estate agent to disclose the requirements described above and would provide that an agent has no other liability in this connection. The bill would also make a statement of findings and declarations.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.4 (commencing with Section 1101.1) is
2 added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil
3 Code, to read:

4
5 Article 1.4. Water Use Efficiency Improvements Upon Transfer

6
7 1101.1. The Legislature finds and declares all of the following:

8 (a) Adequate water supply reliability for all uses is essential to
9 the future economic and environmental health of California.

1 ***(b) Environmentally sound strategies to meet future water supply***
2 ***and wastewater treatment needs are key to protecting and restoring***
3 ***aquatic resources in California.***

4 ***(c) There is a pressing need to address water supply reliability***
5 ***issues raised by growing urban areas.***

6 ***(d) Economic analysis by urban water agencies has identified***
7 ***urban water conservation as a cost-effective approach to***
8 ***addressing water supply needs.***

9 ***(e) There are many water conservation practices that produce***
10 ***significant energy and other resource savings that should be***
11 ***encouraged as a matter of state policy.***

12 ***(f) Since the 1991 signing of the “Memorandum of***
13 ***Understanding Regarding Urban Water Conservation in***
14 ***California,” many urban water and wastewater treatment agencies***
15 ***have gained valuable experience that can be applied to produce***
16 ***significant statewide savings of water, energy, and associated***
17 ***infrastructure costs. This experience indicates a need to regularly***
18 ***revise and update water conservation methodologies and practices.***

19 ***(g) To address these concerns, it is the intent of the Legislature***
20 ***to require property owners to retrofit outdated, high water use***
21 ***plumbing fixtures upon resale, and that sellers or transferors be***
22 ***required to disclose these upgrades upon resale.***

23 ***(h) It is further the intent of the Legislature that retail water***
24 ***suppliers are encouraged to provide incentives, financing***
25 ***mechanisms, and funding to assist property owners with these***
26 ***retrofit obligations.***

27 ***1101.2. (a) On and after January 1, 2014, all existing plumbing***
28 ***fixtures in any residential or commercial real property that are***
29 ***not water-conserving plumbing fixtures shall be replaced prior to***
30 ***the time of sale or transfer by the property owner with***
31 ***water-conserving plumbing fixtures.***

32 ***(b) Compliance with this section shall be included as a condition***
33 ***of escrow for any sale or transfer.***

34 ***(c) A seller or transferor shall disclose the requirements of this***
35 ***section in advance of any sale or transfer of real property. The***
36 ***disclosure of the requirements of this section is a material term of***
37 ***any sale or transfer.***

38 ***(d) A seller or transferor of real property shall certify to the***
39 ***prospective purchaser or transferee, in writing, under penalty of***
40 ***perjury, that the requirements of this section have been satisfied.***

1 *This certification may be included in other transactional*
2 *documents.*

3 *1101.3. For the purposes of this article:*

4 *(a) “Existing plumbing fixture” means any of the following:*

5 *(1) Any toilet manufactured to use more than 1.6 gallons of*
6 *water per flush.*

7 *(2) Any urinal manufactured to use more than one gallon of*
8 *water per flush.*

9 *(3) Any showerhead manufactured to have a flow capacity of*
10 *more than 2.5 gallons of water per minute.*

11 *(4) Any interior faucet that emits more than 2.2 gallons of water*
12 *per minute.*

13 *(b) “Water-conserving plumbing fixtures” means any fixtures*
14 *that use less water than existing plumbing fixtures.*

15 *(c) “Sale or transfer” means the sale or transfer of an entire*
16 *real property estate or the fee interest in that real property estate*
17 *and does not include the sale or transfer of a partial interest,*
18 *including a leasehold.*

19 *1101.4. This article shall not apply to any of the following:*

20 *(a) Registered historical sites.*

21 *(b) Transfers that are required to be preceded by the furnishing*
22 *to a prospective transferee of a copy of a public report pursuant*
23 *to Section 11018.1 of the Business and Professions Code and*
24 *transfers which can be made without a public report pursuant to*
25 *Section 11010.4 of the Business and Professions Code.*

26 *(c) Transfers by a fiduciary in the course of the administration*
27 *of a decedent’s estate, guardianship, conservatorship, or trust.*

28 *(d) Transfers from one coowner to one or more other coowners,*
29 *or from one or more coowners into or from a revocable trust, if*
30 *the trust is for the benefit of the grantor or grantors.*

31 *(e) Transfers made by a trustor to fund an inter vivos trust.*

32 *(f) Transfers made to a spouse, to a registered domestic partner*
33 *as defined in Section 297 of the Family Code, or to a person or*
34 *persons in the lineal line of consanguinity of one or more of the*
35 *transferors.*

36 *(g) Transfers between spouses or registered domestic partners*
37 *resulting from a decree of dissolution of marriage or domestic*
38 *partnership, or a decree of legal separation or from a property*
39 *settlement agreement incidental to a decree.*

1 (h) *Transfers in which a licensed plumber certifies that, due to*
2 *the age or configuration of the property or its plumbing,*
3 *installation of water-conserving plumbing fixtures is not technically*
4 *feasible.*

5 1101.5. (a) *Any real estate agent, real estate broker, or real*
6 *estate salesperson, whether representing a transferor or transferee,*
7 *or both, involved in the transfer of title to property subject to this*
8 *chapter, shall give written notice to the transferee and transferor*
9 *of the requirements of this article prior to the transfer of title to*
10 *the property.*

11 (b) *The duty described in subdivision (a) is the only*
12 *responsibility of the real estate agent, real estate broker, or real*
13 *estate salesperson has with regard to this article and the real estate*
14 *agent, real estate broker, or real estate salesperson shall have no*
15 *liability for any transferor's failure to comply with any other*
16 *provisions of this article.*

17 (c) *Once a transferring property owner has received notice of*
18 *the requirements of this article, he or she shall be solely*
19 *responsible for compliance with them.*

20 1101.6. *This article does not preempt any retrofit requirements*
21 *that will result in an equivalent or greater amount of water savings*
22 *than those provided for in this article.*

23 SEC. 2. *No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*

32 ~~SECTION 1. The Legislature finds and declares all of the~~
33 ~~following:~~

34 ~~(a) Adequate water supply reliability for all uses is essential to~~
35 ~~the future economic and environmental health of California.~~

36 ~~(b) Developing environmentally sound strategies to meet future~~
37 ~~water supply and wastewater treatment needs is key to protecting~~
38 ~~and restoring aquatic resources in California.~~

39 ~~(c) There is a pressing need to address water supply reliability~~
40 ~~challenges raised by expanding urban areas.~~

1 ~~(d) Urban water agencies, using economic analyses, have~~
2 ~~identified urban water conservation as a cost-effective approach~~
3 ~~to addressing water supply needs.~~

4 ~~(e) There are many water conservation practices that produce~~
5 ~~significant energy and other resource savings that should be~~
6 ~~encouraged as a matter of state policy.~~

7 ~~(f) Since the signing of the “Memorandum of Understanding~~
8 ~~Regarding Urban Water Conservation in California” in 1991, many~~
9 ~~urban water agencies and wastewater treatment agencies have~~
10 ~~gained valuable experience that can be applied to produce~~
11 ~~significant statewide savings of water, energy, and associated~~
12 ~~infrastructure costs. This experience indicates a need to regularly~~
13 ~~revise and update water conservation methodologies and practices.~~

14 ~~SEC. 2. Section 379 is added to the Water Code, to read:~~

15 ~~379. It is the intent of the Legislature that public entities~~
16 ~~exercise authority pursuant to this chapter to enact ordinances that~~
17 ~~require the retrofitting of outdated, high water use plumbing~~
18 ~~fixtures, and the disclosure thereof, in connection with the transfer~~
19 ~~of real estate.~~